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BDA Submits Response to SEC Regarding Recent PFM Request for Interpretative Relief.

After extensive feedback from BDA membership and consultation with various Committees, the BDA has submitted a letter to the SEC in response to a fall 2018 Request for Interpretative Relief from the municipal advisory firm PFM regarding private placements.

The letter can be viewed here.

BDA Response

The letter submitted addresses directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity. The BDA strongly disagrees with the request and works to address both the legal and factual misstatements.

The letter focuses on:

- The Current State of the Direct Placement Market;
- The Extent of Municipal Advisor Activity in the Municipal Securities Market;
- The Problematic Rollback of Essential Protections for Investors;
- The Failure to Establish Need that Guidance is Essential for Issuers; and
- The Exacerbation of a Long-Standing Competitive Imbalance Between Non-Dealer and Dealer Municipal Advisor.

Background

PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm "not be required to register as a broker dealer" when conducting certain placement agent activity. They requested guidance exempting them from BD registration, which they argued "is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions."

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

Bond Dealers of America

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